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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: **JUN 25 2015**

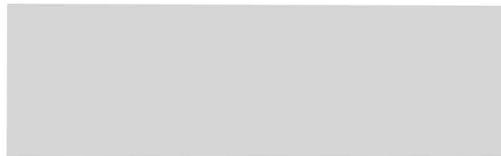


IN RE: Petitioner:



PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

 Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (the director), denied the petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now again before us on a motion to reopen and reconsider. The motion will be denied.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by his United States citizen spouse.

The director denied the petition, concluding that section 204(c) of the Act, 8 U.S.C. § 1154(c) bars its approval because the petitioner entered into a prior marriage for the purpose of evading the immigration laws. On appeal, we affirmed the director’s decision.

On motion, the petitioner submits a brief and additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien’s spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II). An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section 204(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

Pertinent Facts and Procedural History

The petitioner, a citizen of the Dominican Republic, initially entered the United States on June 1, 1993, as a nonimmigrant visitor. The petitioner married his second wife, D-O-¹, a U.S. citizen, less than one month later on [REDACTED] in New Jersey. D-O- subsequently filed a Petition for Alien Relative (Form I-130) on the petitioner's behalf, which she later withdrew on November 30, 1994 after providing a sworn statement in which she admitted that she married the petitioner to help him remain in the United States and that she had never resided with him as man and wife. The petitioner and D-O- divorced on [REDACTED]. The petitioner was placed into removal proceedings on October 31, 1997 and granted voluntary departure on September 10, 1998. On [REDACTED] the petitioner married his third wife, C-D-², a U.S. citizen, in New York. The record indicates that the petitioner complied with the voluntary departure order and departed the United States on January 6, 1999.

On January 14, 1998, the petitioner's sister, a U.S. citizen, filed a Form I-130 petition on his behalf, which was approved on May 27, 1998. On April 10, 2000, the petitioner's third wife, C-D-, also filed a Form I-130 petition on his behalf, which was approved on November 15, 2000. The petitioner claims that he then reentered the United States in 2001 without inspection, admission or parole. Thereafter, U.S. Citizenship and Immigration Services (USCIS) revoked approval of the Form I-130 filed by C-D- on August 10, 2006 and the Form I-130 filed by the petitioner's sister on September 10, 2007, after determining that the petitioner had entered into his prior marriage with D-O- solely to evade U.S. immigration laws, thus precluding USCIS from approving any subsequent petition on his behalf pursuant to section 204(c) of the Act. Both C-D- and the petitioner's sister filed appeals to the Board of Immigration Appeals (the Board), which ultimately dismissed the appeals on March 16, 2009.

On December 2, 2008, the petitioner filed his first Form I-360 self-petition, which the director denied on September 11, 2009 after determining that section 204(c) of the Act barred its approval. We dismissed a subsequent appeal on June 22, 2010, after making an independent determination that the petitioner entered into his marriage with D-O- solely to obtain immigration benefits, and thus, section 204(c) of the Act prohibits approval of any subsequent visa petition filed on his behalf.

On [REDACTED] the petitioner and C-D- divorced. On October 23, 2013, the petitioner filed a second Form I-360 self-petition based on his relationship to C-D-. On March 18, 2014, the director denied the petition, concluding again that section 204(c) barred approval of the petition because the petitioner entered into a prior marriage for the sole purpose of evading U.S. immigration laws. The petitioner timely appealed.

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

During our *de novo* appellate review, we independently found again substantial and probative evidence establishing that the petitioner entered into his prior marriage with D-O- in an attempt to evade the immigration laws and that he is consequently subject to the bar to approval of his self-petition under section 204(c) of the Act. We dismissed the petitioner's appeal accordingly, and hereby incorporate by reference our December 1, 2014 decision.

The petitioner now files a combined motion to reopen and reconsider. On motion, the petitioner submits additional personal statements from himself and D-O-, and twelve brief statements from others. Although the petitioner has submitted new evidence on motion, it does not establish his eligibility. Further, the petitioner's submission does not meet the requirements for a motion to reconsider. The petitioner does not cite binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied the pertinent law or agency policy, nor does he show that our prior decision was erroneous based on the evidence of record at the time. A motion that does not meet the applicable requirements shall be denied. 8 C.F.R. § 103.5(a)(4). Accordingly, the petitioner's motion to reopen and reconsider will be denied for the following reasons.

Section 204(c) of the Act

Section 204(c) of the Act, 8 U.S.C. § 1154(c), states, in pertinent part:

[N]o petition shall be approved if –

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative . . . status as the spouse of a citizen of the United States . . . , by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws or
- (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The regulation corresponding to section 204(c) of the Act, at 8 C.F.R. § 204.2(a)(1)(ii), states:

Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an individual who has attempted or conspired to enter into a marriage for the purpose of evading immigration laws. See *Matter of Tawfik*, 20 I&N Dec. 166, 167 (BIA 1990) (citing *Matter of Kahy*, 19 I&N Dec. 803

(BIA 1988). An adverse section 204(c) determination requires the denial of any subsequent visa petition for immigrant classification filed on behalf of such an individual, regardless of whether he or she ultimately received a benefit through the attempt or conspiracy. *See Tawfik*, 20 I&N Dec. at 167-68; *see also Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978) (section 204(c) determination is to be made by the District Director on behalf of the Attorney General³ during the adjudication of a subsequent visa petition). The evidence of the attempt or conspiracy to enter into a marriage in order to evade immigration laws must be documented in the individual's file and must be "substantial and probative." *See Tawfik*, 20 I&N Dec. at 167. USCIS may rely on any relevant evidence in the record, including evidence originating from prior USCIS proceedings involving the individual. *See id.*; *Rahmati*, 16 I&N Dec. at 539. However, the adjudicator must come to his or her own, independent conclusion and should not ordinarily give conclusive effect to determinations made in prior collateral proceedings. *Tawfik*, 20 I&N Dec. at 168.

Our prior decision on appeal considered *de novo* all the relevant evidence in the record and set forth our independent determination that substantial and probative evidence demonstrated that the petitioner had entered into a prior marriage with D-O- for the sole purpose of obtaining immigration benefits, and thus section 204(c) of the Act prohibited approval of the instant petition. In sum, the record disclosed that the petitioner and D-O-, who married less than [REDACTED] after the petitioner's arrival in the United States, failed to appear for their scheduled interview with legacy Immigration and Naturalization Services (INS) relating to the Form I-130 filed by D-O-. A subsequent investigation conducted by INS agents at the couple's claimed marital residence on November 29, 1994 revealed that D-O- and her two minor children did not reside there and that the petitioner was living there with the owner's daughter. On November 30, 1994, agents located D-O- at the address she resided prior to allegedly moving in with the petitioner. D-O- executed a sworn statement on that date, withdrawing the Form I-130 she had filed on the petitioner's behalf and declaring that she had never resided with the petitioner as man and wife and had married him to help him remain in the United States. D-O- recanted her confession ten years later in a statement, dated October 29, 2004, asserting that she and the petitioner did reside together as husband and wife, did not marry for immigration purposes, and that she was pressured into signing the 1994 sworn statement to the contrary. In our decision, we addressed the individual evidentiary deficiencies, including D-O-'s multiple statements retracting her 1994 confession, and we ultimately found that the petitioner did not overcome the adverse information in the record and did not establish his good faith intentions in marrying D-O-. In particular, we noted that D-O-'s statements did not describe the circumstances under which she was allegedly "pressured" to sign the statements and did not explain why she waited more than ten years to recant her 1994 sworn statement. D-O-'s more recent statement, dated February 13, 2014, asserted that INS agents had assured her that if her marriage was intended for immigration purposes, she would go to prison and have her children taken away. We found the petitioner's allegations unsupported in the record and noted that she did not provide an explanation for why she never raised these allegations in her earlier statements.

On motion, the petitioner submits additional statements from himself and D-O- and twelve brief statements from others. D-O-'s statement on motion is identical to her previous statement, which we found insufficient, except that she now asserts that she waited ten years to recant her original sworn statement because no one had ever requested her to do so. We do not find this assertion to be a

³ This authority is now exercised by the Secretary of the U.S. Department of Homeland Security (Secretary).

reasonable explanation for D-O-'s ten-year delay in recanting her 1994 sworn statement. She does not explain why she required a specific request to recant her sworn statement, particularly if the statement was false as she now claims. She also does not explain why she felt pressured by the consequences of being found to have entered into a marriage solely for immigration purposes if her marriage to the petitioner was in fact *bona fide*. Finally, as we previously stated, D-O-'s recent allegations that INS agents threatened her, made more than twenty years after her sworn statement to those agents and nearly ten years after her original recantation, are not supported by the record or sufficient to overcome the adverse information therein and the remaining evidentiary deficiencies described.

The petitioner's supplemental statement and the remaining supporting statements are also insufficient to overcome the ground for denial of his petition. The petitioner indicates that D-O- was a good friend and neighbor of his sister who introduced them over the telephone before the petitioner's arrival in the United States. He states that the moment he saw D-O-, he wanted to marry her and start a family, and recalls that they had a wedding party at his sister's apartment for which his sister cooked and their godfather baked. Although the petitioner asserts his good faith marital intentions and provides some additional information, he still has not described in any probative detail his courtship with D-O-, their wedding ceremony, joint residence, or any shared experiences. Importantly, the petitioner's statements in the record do not specifically address the derogatory information raised in the INS investigation, including the fact that he was residing with another woman at the residence he claimed to share with D-O- during their marriage, and that D-O- was found residing at another residence, and issued a sworn statement admitting that their marriage was entered into solely for immigration purposes.

The supplemental statement of the petitioner's daughter also does not establish the petitioner's marital intentions, as the record indicates that she was only four years old when the petitioner separated from D-O- and was residing outside the United States during the marriage. She does not indicate that she ever met D-O-. The remaining statements from friends and acquaintances are brief and do not set forth any substantive information about each author's interactions or shared experiences with the couple to establish the petitioner's marital intentions. Additionally, while several authors attest to interacting with the couple in passing, they make no assertions about the *bona fide* nature of the marital relationship.

In addition to the deficiencies cited here and in our previous decision, we note that D-O- asserted in her statements in these proceedings that when she moved in with the petitioner after they married, she left her prior apartment to her friend, [REDACTED]. The record indicates that her former apartment was located at [REDACTED] the same residence where INS agents located D-O- and her children during their November 1994 investigation. [REDACTED] submitted a statement indicating that she resided at the [REDACTED] address many weeks and that she was present the day INS officials came. However, both D-O-'s and [REDACTED] statements are inconsistent with the petitioner's statement of April 4, 2006, in which he indicated that D-O- rented her apartment at [REDACTED] to her friend, [REDACTED] after their marriage and that D-O- would stay there with [REDACTED] when she and the petitioner argued. The record contains no explanation for this inconsistency.

On motion, the petitioner incorrectly maintains that we disregarded substantial evidence in the record, namely affidavits, regarding the *bona fides* of his marriage to D-O and asserts that the new statements on motion chronicle and speak in detail to the petitioner's relationship with D-O-. We previously

conducted a *de novo* review of the record in its entirety and considered all the relevant evidence to independently conclude that substantial and probative evidence in the record demonstrated that the statutory bar under section 204(c) of the Act applied to bar the instant petition. Further, as discussed herein, the statements of the petitioner, D-O- and the petitioner's family, friends and acquaintances do not speak in any probative detail to the petitioner's marital intentions and his relationship with D-O-.

Finally, the petitioner asserts that we, and the director before us, should not have relied on D-O-'s 1994 sworn statement, the INS investigative report, and the statements of the petitioner's neighbor's obtained during the investigation, because they were never provided to the petitioner. The regulation at 8 C.F.R. §103.2(b)(16)(i) requires USCIS to advise the petitioner of "derogatory information considered by the Service and of which the applicant or petitioner is unaware" before issuing an adverse decision on the basis of that information. Here, it is apparent that the petitioner was aware of the derogatory information contained in the record, including in the investigative report, during these and prior proceedings and was provided ample and several opportunities to offer evidence in rebuttal. The petitioner points to no authority requiring USCIS to advise him of derogatory information of which he was and is aware.

Accordingly, our independent and *de novo* review of the record establishes that there is substantial and probative evidence, documented in the record, demonstrating that the petitioner entered into his prior marriage with D-O- for the sole purpose of evading U.S. immigration laws. *Tawfik*, 20 I&N Dec. at 167. Consequently, section 204(c) of the Act applies to bar approval of the instant self-petition.

Conclusion

On motion, the petitioner has failed to overcome substantial and probative evidence in the record demonstrating that his prior marriage was entered into for the purpose of evading the immigration laws. Approval of the instant petition is therefore, statutorily barred pursuant to section 204(c) of the Act.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met and the motion is denied.

ORDER: The motion is denied. The December 1, 2014 decision of the Administrative Appeals Office is affirmed. The petition remains denied.